Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837

[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, NOVEMBER 17, 1956
Vol. CXX. No. 46 Pages 717–732
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange).
Showroom and Advertising: 11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s.* 3*d.* (including Reports), 1*s.* 3*d.* without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

An Ancient Court

Most of the Manorial or Courts leet have fallen into disuse, their powers having been taken over by courts of summary jurisdiction as those courts became regularly established in accordance with the Summary Jurisdiction Acts. There remain a few ancient courts, however, such as the Verderer's court in the New Forest, which are to many people, a pleasant survival of old traditions and quaint customs, and which may even today serve a useful purpose.

The Yorkshire Post has described the picturesque ceremony of the holding of the court leet of the Manor of Danby in what remains of Danby Castle. This has been the setting of the court for more than 300 years. A York solicitor who is under-sheriff of Yorkshire presided, and as steward of the Manor read the proclamation. Present also were the jury of the commoners and the affeerors who fix fines to be paid by offenders.

Freeholders and tenants owing "suit and service" to the lord are under a duty to attend, and a fine in default is twopence. Many such fines were dropped into a wooden bowl on behalf of the absentees. Eleven new tenants also attended to be sworn in and to pay their shillings to the court.

There was no other business. Some may feel that all this is rather a waste of time. Others like to be reminded of old times and old customs by this relic of feudalism. But there is more to it than that. Of the Danby court, *The Yorkshire Post* says that it works, and works well.

"It regulates the 1,200 acres of common land for which Viscount Downe is Lord of the Manor. It controls sheep grazing; watches for encroachments or in some cases sanctions them on payment of an annual rent; sees to village greens and garths; supervises the takings of turf and bracken, and takes up stray cattle and sheep and impounds them in the Ainthorpe pinfold."

Absconding from Approved School

The problem of the boy or girl who, having been sent to an approved school, not for an offence, but as being in need of care or protection, persistently absconds, exercises the minds of magistrates. Many feel that a borstal institution, intended for those who may have committed offences of a serious kind, is no place for such a boy or girl. The difficulty is that in some cases it appears that no approved school is suitable and the absconder is likely to be a bad influence on the other pupils.

Recently *The Western Daily Press* reported the case of a 17 year old girl who was brought before a magistrates' court after absconding from an approved school. Apparently she had originally been dealt with as in need of care or protection. The headmistress of the school said the managers did not wish the girl to be returned to the school, where she had proved unco-operative, defiant and truculent. It was considered she would be a bad influence. She had already absconded from other approved schools.

On behalf of the girl it was asked that she should be sent back as the only alternative appeared to be borstal. After retirement, the magistrates decided that she should go back.

It is easy to appreciate the attitude of the school managers, and also reluctance to send the girl to borstal. A third course open to the court was to make a new approved school order, but the question then arises whether there could be found a school which could hold her. There remains the power of the Secretary of State to transfer her to another school, but that is entirely a matter for his discretion.

What seems to be wanted is some kind of approved school or institution that is not a borstal institution but is able to exercise stricter discipline and control than are applied in approved schools generally, where, quite properly, there is a considerable amount of freedom.

The *Callender* Case

We referred to the *habeas corpus* proceedings in this matter at p. 418, *ante*. Subsequent proceedings, which have no doubt been followed by our readers in the national press have put a different complexion upon the case. In these later proceedings, as reported in the press, the Court was satisfied that affidavits of the mother used in the *habeas corpus* proceedings and in the subsequent application to the Court were, "in many respects untrue and presented a wholly

false picture with regard to the true state of affairs regarding the mother and the girl at all material times." The Lord Chief Justice said that the Court had been misled by the untrue statements. The girl's application for *certiorari* was dismissed and the mother's withdrawn!

Altering Sentence

There appears to be no power conferred on a magistrates' court to alter its sentence once pronounced. Occasionally, however, the court, while still sitting, alters a sentence passed at that sitting by reducing it, and we cannot recall an instance in which this has been challenged. That, no doubt, is simply because it is in favour of the defendant. If the sentence were increased it would almost certainly be appealed against. It would be impracticable to re-open the case on a subsequent day, even if this were desired.

The position at courts of Assize or quarter sessions is different, as is shown by the case reported in the *Newcastle Journal*. At the Durham Assizes a man was sentenced by Pearce, J., to three years' corrective training. The next day the prisoner was again brought before the court when the learned Judge said he had been reflecting about the case and thought that the right sentence on this occasion was six months; although the prisoner was eligible for corrective training the time for that had not yet come.

It is stated in *Archbold's Criminal Pleading*, 33rd edn., p. 224, that at Assizes the Judge who has passed a sentence may, at any subsequent date till the assizes are completed, by the signing of the document which is delivered to the gaoler as recording the sentences of the court, alter the sentence, either by reducing or even increasing it. So too a court of quarter sessions has power to alter a sentence it has passed.

Inadequate Penalties

It is reported that the conservators of Ashdown Forest wish to increase to £10 the maximum fine that can at present be imposed for an offence against their byelaws. That maximum was fixed 80 years ago at 40*s*., and as we have said before 40*s*. was then a considerable sum, representing a weeks' wages, or even two or three weeks' in the case of many working men.

The conservators have been informed that as the maximum fine is limited by the Commons Act, 1876, there can be no increase.

A similar position must exist in the case of many byelaws and regulations, and the only remedy seems to be by amending legislation. In the case of Ashdown Forest the object is principally to increase the penalties for the litter nuisance, and no doubt it would have a deterrant effect.

This is all part of the general question that is so often discussed: how best to deal with the matter of fines having regard to the greatly changed value of money. It is difficult to see how it can be dealt with on a general basis, and the only practical course seems to be for those interested, whether as magistrates or otherwise, to call attention to particular instances in the hope that when opportunity occurs these may be included in amending legislation.

Illness and Careless Driving

It was decided in *Kay* v. *Butterworth* (1946) 110 J.P. 75 (a case which was followed in *Henderson* v. *Jones* (1955) 119 J.P. 304) that if a driver allows himself to be overtaken by sleep while driving he is guilty, at least, of the offence of driving without due care and attention, because it is his business to keep awake. Humphreys, J., said "If drowsiness overtakes him while driving he should stop and wait until he becomes fully awake. I do not mean to say that a person should be made liable at criminal law who, through no fault of his own becomes unconscious while driving as, for example, a person who has been struck by a stone or overcome by a sudden illness."

The latter part of the observations of the learned Judge which we have quoted was probably present to the mind of the magistrates who, as reported in the *Manchester Guardian* of October 29, 1956, dismissed a charge of careless driving against a motor coach driver. We do not know what other evidence was given in support of the charge but the report records that a woman passenger in the coach said "all of a sudden his hands went up as if he was going to faint, he made a funny noise and then slumped on me." The driver, in evidence, said that he had a blackout and remembered nothing more until he found himself in hospital.

It would appear from the facts given above that the driver had no warning that he was going to be ill. It would be a different matter, we suggest, if there were evidence to show that a driver, feeling ill, persisted in continuing to drive his car until he finally collapsed. This would be comparable with the driver who felt drowsy and went on driving instead of stopping as Humphreys, J., said that he should. But there is nothing in the report in the *Manchester Guardian* to suggest that the driver had any warning of his illness, and the magistrates, in dismissing the charge, were acting on the view expressed in the passage we have quoted from *Kay* v. *Butterworth* (*supra*).

Limited Disqualification

We have commented before on what we consider to be a misinterpretation of the proviso to s. 6 (1) of the Road Traffic Act, 1930, which has led courts from time to time to order disqualification in terms which did not comply with that proviso. Our attention has been drawn to a report in *The Western Morning News* of October 26 which records that a court sent a defendant to prison for three months for driving dangerously in a Land Rover and disqualified him for two years "from driving all vehicles except tractors." The only authority for a limited disqualification was that in s. 6 (1) which read that "any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed" so that in the case referred to above the disqualification could properly have been restricted to the driving of vehicles of the same class or description as a Land Rover and the defendant would then have been left free to drive any other type of vehicle.

We refer to this point partly in order to remind our readers of the fact that as from November 1 the power to impose a limited disqualification has gone. It will be seen from sch. 9, Road Traffic Act, 1956, that the proviso to s. 6 (1) of the Act of 1930 has been repealed.

Brakes on a 6-wheeled Vehicle

Langton v. *Johnson* was reported in brief at 120 J.P.N. 679. A full report now appears at [1956] 3 All E.R. 474. The facts were that a summons was issued in respect of the use of a vehicle which did not comply with reg. 39 (1) of the Motor Vehicles (Construction and Use) Regulations, 1955. The vehicle was classed as a 6-wheeled vehicle. It had three axles, one pair at the front each with two wheels, all four front wheels being operated by the steering gear. The third axle was the rear axle which carried the other "two" wheels which, although each was a twin wheel, constituted only two wheels for the purposes of the regulation. The foot brake operated on all six wheels, the hand brake operated

on the rear wheels only. In the magistrates' court, the charge under reg. 39 (1) was found proved. On appeal, the recorder allowed the appeal, but the High Court held that the original conviction was correct.

The Lord Chief Justice said that he had "found the greatest difficulty in construing these regulations," but that he thought that on the whole the judgment given by Ashworth, J., did give a meaning to these very obscure provisions which motor vehicle drivers are supposed to understand. Pausing here, we would add that it seems a very great pity if regulations on which not only drivers and owners but also manufacturers have to work are framed in language which justifies such a comment from the Lord Chief Justice. It is not so stated in the case but we assume that this vehicle's brakes were those with which it was originally equipped and if that be so there must be a great many similar vehicles on the road which do not comply with reg. 39 (1).

The point of the case was that the regulation requires that there shall always be available to the driver, if one braking system fails, another brake which will enable the driver to apply effective brakes to "not less than half the number of the wheels of the vehicle." Regulation 39 (7) (1) provides that for this purpose not more than one front wheel shall be included in half the number of wheels. Ashworth, J., said that the effect of this was to make illegal a braking system in which the handbrake of a six-wheeled vehicle acted on two front wheels and one rear wheel, but that it did not avoid the plain requirement of reg. 39 (1) that the handbrake should operate on not less than half the number of wheels and that this could not be complied with in the case of a six-wheeled vehicle, by a brake operating on two wheels only. The effect must be that the handbrake has to operate on the two rear wheels and on two of the front wheels, since no manufacturer would produce a vehicle with a brake operating on only one of a pair of wheels. What, we wonder, will be done about existing six-wheeled vehicles which do not comply with reg. 39 (1) ?

Driving While Disqualified — Avoiding Imprisonment

In *Lines* v. *Hersom* [1951] 2 All E.R. 650; 115 J.P. 494, the Lord Chief Justice emphasized the seriousness of the offence of driving while disqualified and said "For offences under s. 7 (4) the courts are clearly told by Parliament to impose a sentence of imprisonment unless there are special circumstances of the kind which would justify a lighter sentence, *i.e.*, a fine." In another part of his judgment he said "Therefore, they have not got an unfettered discretion under s. 7 (4) to refrain from sending an offender to prison. They can only do so if there are special circumstances which so entitle them."

It seems clear that the High Court was not considering whether there was any way, other than by the imposition of a fine, in which a court could avoid sending such an offender to prison, but we read in the *East Anglian Daily Times* of November 2 the report of a case in which magistrates adopted another course. The offender in that case "was sentenced to one day's imprisonment which meant his immediate release." He could not be sentenced to one day's *imprisonment* because s. 107 (1) of the Magistrates' Courts Act, 1952, enacts that a magistrates' court shall not impose imprisonment for less than five days. The court acted, we presume, under s. 110 of that Act which provides that where a magistrates' court has power to commit to prison a person convicted of an offence . . . it may order him to be detained within the precincts of the court house . . . until such hour, not later than eight o'clock in the evening of the day on which the order is made, as the court may direct, and, if it does so, shall not where it has power to commit him to prison, exercise that power.

The use of s. 110 in the case in question resulted, it appears, in the offender not being punished at all for this very serious offence. It would have been a more onerous sentence if he had been fined, but the court could not have fined him without finding special reasons. There is in s. 110 no qualifying phrase (such as appears in s. 3 of the Criminal Justice Act, 1948) which requires the court before acting under s. 110 to have regard to the circumstances, including the nature of the offence. Nevertheless we feel that to use s. 110 in such circumstances is certainly not acting within the spirit of s. 7 (4), especially when the High Courts' judgment in *Lines* v. *Hersom*, *supra*, is considered, and we should be very interested to see whether that Court would hold that it was even within the letter of the law.

A Recurring Street Nuisance

The British Federation of Hotel and Boarding House Associations was concerned at its annual conference with street photographers, said to be a growing nuisance. The conference was held at Blackpool, and delegates from elsewhere complained that the town council of Blackpool had let the matter drift. A Blackpool representative said that every town and village in the country was similarly troubled. This is an exaggeration. There cannot be many towns and there must be fewer villages, where the potential demand for photographs taken in the street would be enough to give rise to a supply. It is however true that in many popular resorts there are too many street photographers. "In my opinion," said one delegate, "they are spivs. They flock into Blackpool and fleece people right and left." Complaints of fraud or near fraud were made by others. Apart from this, or from conferring on the street photographers a title unattractive but often very apt, there is the question of obstruction of the footway and the related questions of touting and interference with pedestrians. Some years ago, the latter nuisance in particular became so marked in Westminster that the city council persuaded the Home Secretary to confirm a byelaw forbidding street photographers to importune people in a number of named streets in the city. This was useful for a time, but, if our information is correct, the byelaw is not being enforced by the metropolitan police, the view having been taken that the city council must see to its enforcement. This line, if it is taken, can only mean that the byelaw will not be enforced, and in the present year, accordingly, we have heard of fresh instances where visitors in the neighbourhood of the city hall itself have been molested, as they used to be before the byelaw was made—no other verb seems adequate. We do not like the remedy suggested in a resolution of the Federation mentioned at the outset of this Note, that local authorities should control street photographers by licence. This is well enough for the inner area of Trafalgar Square, which is Crown property, where we believe that licences are required, and issued, by the Minister of Works. There are, however, too many commercial activities already which require licences from local authorities, which means, in practice, licences obtainable through officials, normally of minor rank. This can give one of the most fruitful openings for bribery (or suspicion of bribery). If licences from local authorities were required by law for photographers working in the streets, there would obviously have to be a right of appeal, preferably to the magistrates' court. The local authority might feel obliged to investigate the applicant's character if not his competence, and, if he swindled his customers (the president of the Federation spoke of being supplied with a photograph which faded away

within a fortnight), the local authority would be held blameworthy. We think, therefore, that a byelaw under s. 249 of the Local Government Act, 1933, to forbid molestation would be a better form of control. Experience in Westminster supplies a precedent, but seems to suggest that outside the metropolitan police district the precedent could usefully be strengthened, and that the byelaw should be enforced by the police. It is, after all, designed to protect persons who are lawfully using the highway against being interfered with thereon for purposes of gain.

CRIMINAL STATISTICS, 1955

Each year the permanent Under Secretary of State at the Home Office submits to the Home Secretary statistics relating to crime and criminal proceedings in England and Wales. Those for 1955 have recently been published. They can be purchased from Her Majesty's Stationery Office at a price of 7*s*. net.

Reference to the table of contents of the introductory note shows how difficult it is to decide which features to select for comment. Here are the headings under which information is given:—

Chapter III. Indictable offences known to the police and cleared up.

Chapter IV. Persons found guilty of offences of all kinds.

Chapter V. Persons found guilty of indictable offences. Comparison of certain groups of indictable offences.

Chapter VI. How the courts dealt with persons found guilty of indictable offences.
(i) Higher courts (*i.e.*, Assizes and quarter sessions).
(ii) Magistrates' courts.

Chapter VII. Use made by all courts of imprisonment, fines and probation in dealing with persons found guilty of indictable offences.

Chapter VIII. Persons found guilty of non-indictable offences.
(i) Number of persons found guilty.
(ii) How the courts dealt with persons found guilty.

Chapter IX. Persons cautioned by the police.

Chapter X. (i) Murder.
(ii) Suicide.
(iii) Defence Regulations.
(iv) Proceedings in magistrates' courts other than criminal proceedings.

(This has the appearance of a strangely heterogenous mixture.)

There follow graphs and six appendices giving figures under various headings for the year 1938 and the years 1947 to 1955 inclusive, tables showing the incidence of crime at different ages, and tables giving figures relating, between 1910 and 1933 to persons aged 16 and over and between 1934 and 1955 to those aged 17 and over, found guilty of indictable offences. The distinction is made, of course, because of the change effected by the Children and Young Persons Act, 1932, in the definition of a "young person," who thus became a person under 17 instead of a person under 16.

The Statistics themselves occupy 92 pages. The first 20 pages are concerned with comparative tables for the five quinquennia from 1930 to 1954 and for the calendar year 1955, and then follow the annual tables for the year 1955.

Having indicated in broad outline the information which is available we propose to select at random some of the particulars which appear to us to be of interest. From chapter IV of the introductory note we learn that the total number of persons found guilty in 1955 of offences of all kinds was 735,288. This does not mean that that number of individuals were so found guilty because we read in chapter II that if a person is prosecuted on two or more occasions he is recorded once on each occasion. Of the total of 735,288 no less than 407,815 result from traffic offences dealt with summarily, a percentage of 55.5. The next highest scorer is larceny with 68,438, or 9.3 *per cent.*, followed by drunkenness and other offences against intoxicating liquor laws with 56,169 or 7.6 *per cent.* Breaking and entering account for 16,411 (2.2 *per cent.*), offences by prostitutes 11,878 (1.6 *per cent.*), assaults (non-indictable) 10,465 (1.4 *per cent.*) and violence against the person 4,958 (0.7 *per cent.*).

When we come to consider only the indictable offences we find that the total number of persons found guilty in all courts was 107,446 of whom 93,429 were males and 14,017 were females. Sixty-four *per cent.* larceny, 15 *per cent.* breaking and entering and four *per cent.* receiving accounted between them for 83 *per cent.* of the total, the same percentage as in 1953 and 1954. So far as age groups were concerned, 33 *per cent.* were under 17, 12 *per cent.* aged 17 and under 21, 21 *per cent.* aged 21 and under 30 and the remaining 34 *per cent.* aged 30 and over, so that 66 *per cent.* of serious crime was committed by persons aged under 30.

From chapter VI we learn how the courts dealt with "indictable offenders." During 1955 Assizes and quarter sessions found 16,241 guilty. 1954's total was 16,721 and that for 1953 was 18,206. In 1938 it was only 8,612. The offenders are split up into age groups for the purpose of setting out how the courts dealt with them. For the higher courts offenders under 17 totalled 496 in 1955, and 47 *per cent.* were placed on probation and seven *per cent.* were conditionally discharged. The other percentages were detention centre four, approved school 16, Borstal (only those aged 16) 17, and otherwise dealt with nine. Offenders aged 17 and under 21 numbered 3,511, 43 *per cent.* were placed on probation or conditionally discharged, 29 *per cent.* went to borstal and 11 *per cent.* to prison. Detention centre, fine and otherwise dealt with accounted for two, seven and eight *per cent.* respectively. Those aged 21 and over numbered 12,234, and of these 59.1 *per cent.* went to prison and 11.9 *per cent.* were fined. Conditional discharge or probation (20.4), corrective training (2.7), preventive detention (1.3), and otherwise dealt with (4.6), made up the balance.

Magistrates' courts dealt in 1955 with 91,205 offenders found guilty of indictable offences against 89,650 in 1954, 97,578 in 1953 and 69,851 in 1938. The age grouping here, for 1955, is under 14, 20,580; 14 and under 17, 14,437; 17 and under 21, 9,570; and 21 and over 46,618. In the last group we find that 54 *per cent.* were fined and 17 *per cent.* were sent to prison. Absolute and conditional discharge and probation percentages were two, 12 and 11 respectively.

Four *per cent.* were committed to quarter sessions for sentence under s. 29 of the Magistrates' Courts Act, 1952, the same percentage as in 1954. Detention centres accounted for only one *per cent.*, both in the 14 to 16 and in the 17 to 20 age groups.

The total numbers of "indictable offenders" sent by all courts to imprisonment, penal servitude, corrective training or preventive detention in the years 1938, and 1953, 1954 and 1955 are given in chapter VII. For males the totals were 12,554, 19,568, 17,386 and 16,547 and for females 1,074, 1,419, 1,231 and 1,127. When these figures are expressed as percentages of those found guilty we find on the whole a gradual reduction over the years, the figures for 1938 and 1955 being as follows:—

Magistrates' Courts	Males	Females
Age 17 to 20		
1938	8.1	3.4
1955	4.7	2.4
21 and over		
1938	29.6	12.5
1955	22.0	9.4
(The 1955 percentages include those committed to quarter sessions for sentence.)		
Higher Courts		
Age 17 to 20		
1938	7.5	9.3
1955	10.9	7.6
21 and over		
1938	67.6	51.0
1955	64.0	43.9

The particulars of non-criminal proceedings in magistrates' courts (chapter X) show that in 1955 3,598 affiliation orders were made compared with 3,842 in 1954 and 4,313 in 1938. "Married Women Acts" orders for the same three years were 12,644; 13,613 and 11,177 respectively and Guardianship of Infants were 4,993; 5,150 and 1,319 respectively. Adoption orders numbered 7,895, 8,070 and 5,392 for those same years.

Table VI of the Statistics for 1955 gives details of the appeals to the Court of Criminal Appeal. There were 1,060 applications to the Court for leave to appeal, 279 against conviction, 598 against sentence and 183 against conviction and sentence. No less than 380 were abandoned; in 532 the Court refused leave and in 148 leave was granted. There were also 16 appeals on questions of law alone, where leave is not required, and in five cases the trial Judge gave his certificate allowing an appeal. Of the total of 169 appeals four were abandoned. In 36 cases the conviction was affirmed and in 27 it was quashed. In 16 the sentence was affirmed, in one it was quashed and in the remaining 85 cases the sentence was quashed but some other sentence was substituted.

Appeals in criminal cases from magistrates' courts to quarter sessions in 1955 are dealt with in table XIII. The total number was only 1,836 and of these 288 were abandoned. The remainder were dealt with as follows:—

Case remitted to magistrates' court ...	8
Conviction quashed	268
Conviction affirmed	
(*a*) without variation of sentence ...	560
(*b*) with variation of sentence ...	171
Appeals against sentence only	
(*a*) sentence confirmed	214
(*b*) sentence varied	327

It seems reasonable to draw from these figures the conclusion that the magistrates' courts throughout the country do justice in a way which leaves the vast majority of defendants feeling that they have had a fair deal, or that, at the very least, the probability that the magistrates are right in their decision is sufficiently strong to make it not worth while to consider any appeal. In saying this we allow for the fact that a number of dissatisfied defendants in less serious cases may well feel that an appeal is not in all the circumstances worth the trouble and expense involved.

There were 62 appeals against bastardy orders. Twelve were abandoned, in 29 cases the lower court's decision was upheld, in five it was varied and in 16 it was reversed. There were also 22 appeals against refusals by magistrates' courts to make bastardy orders. Of these 22, three were abandoned and the magistrates' court's decision was upheld in six cases and was reversed in 13. It will be remembered that we gave earlier the figure of 3,598 as the number of bastardy orders made in 1955.

Table XX gives details about the numbers of Broadmoor patients. We find that during 1955 there were 203 fresh committals, and that the total number detained on December 31, 1955 was 1,107, 886 men and 221 women. Of the 1,107, 208 had been detained for 20 years or more.

The final table (XXII) gives information about legal aid and appeal aid granted by the courts. The total number of legal aid certificates granted on the application of the prisoner was 3,855. 1,565 applications were refused. In 301 cases the court offered a legal aid certificate and in 265 of these it was accepted but in 36 it was refused by the prisoner.

Committing justices gave a defence certificate, on application by the prisoner, in 3,756 cases and refused it in 1,045 cases. They offered one in 349 cases and it was accepted by 277 prisoners but was refused by 72. In 68 cases the certificate authorized two counsel, the charge in 49 of these cases being murder.

Courts of quarter sessions had 2,234 applications for defence certificates. They granted 1,200 and refused 1,034. Their offer of a defence certificate was accepted in 169 cases and was declined in 15. They authorized two counsel in four cases.

Assize Courts granted certificates in 265 cases on the prisoner's application and refused them in 76 cases. Their offer of a certificate was accepted in 18 cases and declined in six cases. Eleven of their certificates authorized two counsel.

Appeal aid on appeals to quarter sessions was granted to 369 appellants and to 26 respondents. It was refused to 113 appellants and to six respondents.

As we have said we have made no effort to cover all the ground which the Statistics do. Those of our readers who wish for more details must, we fear, go to the Statistics themselves. We wonder whether anyone computes the cost of assembling and publishing all this information and to what extent sales can be set off against the gross cost. But these are academic questions since we have grown so accustomed to having this mass of figures placed annually before us that it would be unthinkable now to suggest that they are not all necessary.

ADOPTION AND THE FOREIGN ELEMENT

[CONTRIBUTED]

Until the present century, English law has been most reluctant to accord normal rights and privileges to any children not born in actual wedlock. But in 1926, two statutes, the Legitimacy Act, 1926, and the Adoption Act, 1926, radically altered the positions of two classes of children, respectively illegitimate children whose parents, being free to marry each other at the time of birth, do in fact marry later, and adopted children. But there is in fact one important respect in which the two Acts differ, in that while the Legitimacy Act affords some recognition to foreign legitimations, the Adoption Act does not recognize foreign adoptions.

Adoption s now governed by a consolidating statute of 1950 which in some respects maintains the emphasis on British Nationality and residence. To a certain extent this is explained by the fact that adoption is one of the answers to a national problem, and the framers of the Act may have put this consideration before the assimilation of the adopted child's legal position with that of the " normal " child.

Section 2 (5) of the Act states:

"An adoption order shall not be made in England unless the applicant and the infant reside in England, and shall not be made in Scotland unless the applicant and the infant reside in Scotland."

As might be expected, the word " reside " has been the subject of judicial consideration, and the judgment of Harman, J. in *Re Adoption Application* No. 52 of 1951 [1952] 2 All E.R. 931 contains a careful examination of the judicial meaning of the word in this particular context. The other principal context in which it occurs is income tax law ; it also occurs in s. 18 of the Matrimonial Causes Act, 1950. In relation to adoption it " denotes some degree of permanence." It is not necessary that the applicant should have a home of his own in England or Scotland as the case may be, but he must have a settled headquarters. It seems he cannot for this purpose be resident in more than one place.

The facts of the case were that a Nigerian civil servant and his wife wished to adopt an infant in this country. They had bought a cottage here where they intended to live when the husband left the service seven years hence. His usual tour in Nigeria was 15 months, followed by a leave of three months in England. On one of these leaves the couple made arrangements with an adoption society, and applied for an adoption order in respect of the infant. The husband returned to Nigeria but the wife remained here in order that the infant might have been in her care for the requisite three months, the husband's application being withdrawn. It was the intention of the wife to return to Nigeria with the infant after the order was granted. Harman, J., regretted that he had no power to make an adoption order, holding on the facts that the wife was not resident in England.

In the course of the hearing it appeared that orders had been made in three previous unreported cases, the facts whereof were similar, in particular the case of *Re W.*, where Evershed, J., had made an order. In this case however, it appears that the wife had remained behind permanently.

One cannot let this matter pass without criticism. Undoubtedly Harman, J.'s decision was correct on the facts, but many cases occur in practice where the applicant is not resident abroad to the same extent. In particular the case of service personnel springs to mind. A regular soldier may be serving abroad for say two and a half years, together with his family. Probably he has no home of his own at all in this country, but there is no degree of permanence about his residence abroad; it would seem unfair that he should be penalized when his comrade stationed in this country would not be, even though liable to an overseas posting at short notice. While the case is certainly doubtful, one feels that service personnel and other short-term residents abroad should be brought within " reside in England."

It must be borne in mind that the infant as well as the applicant must be resident here. The critical date is the hearing of the application. In the Scottish case of *XY Petitioners* (1954) S.L.T. (Sh. Ct.) 86, the sheriff substitute held that he had no jurisdiction to make an order in a case where the applicant had left Scotland two months before the hearing, in order to make a permanent home in Canada.

The next section to be considered is s. 16 (1), which states that an infant who is not a citizen of the United Kingdom and Colonies shall automatically be granted such citizenship upon adoption, if the adopter, or in the case of a joint application the male adopter, is a citizen of the United Kingdom and Colonies.

Section 17 of the Act provides for the establishment of a Register of Adoption Orders, and s. 18 provides that every order made by a court in England shall be entered therein. There are similar provisions for Scotland. However only adoption orders made in this country may be entered in the Register. To take the example of the serviceman again, suppose that in the course of his overseas tour he adopts an infant in Malaya, obtaining an adoption order from a Malayan court. On his return to this country he must go to the expense and trouble of adopting the infant afresh, and it may be more than inconvenient if his leave is of short duration. Moreover, an adoption order of a competent foreign court will not be recognized here for the purpose of s. 13 of the Act (*Re Wilby* [1956] 1 All E.R. 27; and *Re Wilson* [1954] 1 All E.R. 997). Indeed, it is hard to see that it will receive anything more than a *de facto* recognition. In *Wilby's* case, Barnard, J., said that the adoption would be valid for some purposes but did not elaborate on this. Probably there are no greater advantages than a guardianship order gives. This is a most unsatisfactory state of affairs, and one cannot believe that this survivor of the doctrine of the sovereignty of the British courts can be in the best interests of the child. The recognition of foreign decrees of divorce is a vexed question, and one hesitates to add another plea for such recognition, but there is surely a strong case for allowing the recognition of adoption orders made by foreign courts in circumstances similar to the English requirements, preferably on a reciprocal basis. The position of an infant adopted abroad and brought into this country is surely untenable if an English court were, for some reason, to refuse an application for his adoption. The applicant would still, presumably, be allowed to retain custody. The importance of British Nationality is further emphasized in s. 39 (1) of the Act, which forbids the care and possession of an infant who is a British subject to be transferred to any person resident abroad and not a British subject, and is not the guardian or relative in connexion with any arrangements made for his adoption.

Furthermore, by s. 39 (2) a licence must be obtained before any such infant can be transferred to the care and possession of any British subject resident abroad who is not the guardian or relative.

Section 40 deals with the licence mentioned above. The only persons who are a licensing authority are the chief metropolitan

magistrate, the magistrate at Bow Street, and any other magistrate appointed by the Secretary of State; and in Scotland the sheriff of the district in which the infant resides. The licence may be subject to restrictions and conditions.

Two sheriff court cases have added to this section. In *re Mrs. M, Petitioner* (1951) S.L.T. (Sh. Ct.) 43, the sheriff substitute held that it was sufficient if a person living abroad, to whose care it was sought the infant should be transferred, intended to adopt the infant *de facto*, though not *de jure*.

In *re C, Petitioner* (1953) S.L.T. (Sh. Ct.) 2, the sheriff substitute held that the consent of a person who was a parent or guardian of the child should be attested by a justice of the peace in the terms of s. 4 of the Act, though it is hard to see on what authority.

W.D.P.

DISCHARGES TO RIVERS

By A. S. WISDOM

The flow of water in a river is made up and maintained by both surface water, *i.e.* tributaries and feeder streams, and ground water percolating through the bed and banks. Additionally, the flow may be assisted by a number of artificial discharges to the river in the nature of (1) sewage effluents; (2) trade effluents; and (3) surface water flows, and it is these which are now considered.

Sewage Effluents

The responsibility for providing adequate sewerage facilities rests with local authorities, *i.e.* borough, urban and rural district councils, or joint sewerage boards where the local authorities combine, who must provide public sewers necessary for effectually draining their districts and deal effectually with the contents of their sewers by means of sewage disposal works or otherwise (Public Health Act, 1936, s. 14). Local authorities are given powers to construct and maintain sewers and to purchase or erect sewage disposal works (*see* ss. 15–24 of the Act of 1936. The term " sewage " has not been legally defined, but ss. 22 and 34 of the Act of 1936 refer to both surface water drainage (that is, water draining from roofs and highways) and foul water drainage, being soil sewage and domestic refuse water; the term does not apply to trade wastes which are considered later.

The sewage is conveyed from its various points of origin through the sewers, either by pumping or gravity, to the sewage disposal works, where it is subjected to a series of treatment processes (screening, settlement, filtration, humus tank treatment, etc.) so that the final effluent attains a quality satisfactory for discharge to a convenient watercourse without causing pollution or giving rise to a nuisance.

The final products at a sewage works consist of sludge and treated sewage effluent. The sludge is disposed of by deposit on land or may be sold for fertilizer. The final sewage effluent is discharged to a watercourse or tidal waters or settled on a convenient area of land for absorption.

A sewage effluent discharged to a stream has to satisfy a number of legal requirements. Firstly, s. 30 of the Public Health Act, 1936, requires that the outfall conveying the effluent to the stream shall not be constructed or used until the effluent has been so treated as not to affect prejudicially the purity and quality of the water in the stream. This requirement is met in practice by the treatment of sewage already described. There have been a number of cases on the earlier provision which s. 30 of the Act of 1936 replaced, namely, s. 17 of the Public Health Act, 1875. *Durrant* v. *Branksome U.D.C.* (1897) 61 J.P. 77, decided that a local authority have the right to discharge their sewers into a watercourse provided that the effluent is free from all excrementitious or foul or noxious matter, and that surface water may be so discharged though it carries down sand and silt; but water from a road surface charged with black and oily mud constitutes " filthy water " within the meaning of s. 17: *Dell* v. *Chesham U.D.C.* (1921) 85 J.P. 186. Where sewage or other filthy water is conveyed into an already polluted stream no offence is committed against s. 17 unless the stream is thereby made fouler than it was before (*A.-G.* v. *Birmingham, Tame and Rea District Drainage Board* (1910) 74 J.P. 57)—but today this does not appear to be a good defence to proceedings taken under s. 2 of the Rivers (Prevention of Pollution) Act, 1951. In *A.-G.* v. *Ringwood R.D.C.* (1928) 92 J.P. 65, it was held that s. 17 was contravened if the purity and quality of the water in a stream was deteriorated at the point of discharge of a sewer, and it is not necessary to show deterioration to the stream general.

Secondly, by s. 31 of the Public Health Act, 1936 (which largely replaced s. 19 of the Public Health Act, 1875) local authorities must discharge their functions (*inter alia*) of disposing of sewage so as not to create a nuisance. Decisions given upon the earlier provision held that negligence must be proved in actions alleging a breach of duty under that section (*see Hawthorn Corporation* v. *Kannuluick* (1906) 93 L.T. 644; *Hammond* v. *St. Pancras Vestry* (1876) 38 J.P. 456; *Stretton's Derby Brewery Co.* v. *Derby Corporation* (1894) 69 L.T. 791), although a remedy might lie by way of complaint to the Minister under s. 299 of the Act of 1875 and payment of compensation under s. 308 of the same Act (*see* now ss. 278 and 322 of the Act of 1936): *Dent* v. *Bournemouth Corporation* (1897) 66 L.J.Q.B. 395; *Hesketh* v. *Birmingham Corporation* (1924) 88 J.P. 77.

Thirdly, s. 7 of the Rivers (Prevention of Pollution) Act, 1951, must be considered in relation to sewage effluents. This is discussed later.

Quite apart from statutory provisions, a local authority who discharge impure sewage from their sewerage system into a stream and pollute it are liable to an action at common law for damages and will be restrained by injunction from discharging further matter: *Jones* v. *Llanrwst U.D.C.* (1911) 75 J.P. 69; *Haigh* v. *Deudraeth R.D.C.* (1945) 110 J.P. 97. This is based on the principle that a riparian owner is entitled to the water of his stream in its natural flow, without sensible diminution or increase and without sensible alteration in its character or quality, and that any invasion of this right causing actual damage or calculated to found a claim which may ripen into an adverse right entitles the injured party to the intervention of the courts: *Young & Co.* v. *Bankier Distillery Co.* [1893] A.C. 691; *Pride of Derby Angling Association, Ltd.* v. *British Celanese, Ltd.* [1953] 1 All E.R. 179; 117 J.P. 52.

Trade Effluents

Substantial quantities of liquid wastes arising from industrial works, factories and trade premises are disposed of variously, *e.g.* (*a*) by treatment and return to the factory for re-use; (*b*) by disposal on land where this can be effected without causing a nuisance or giving rise to pollution; (*c*) by discharge (after treatment where necessary) to a convenient watercourse; (*d*) by discharge (after treatment where necessary) to public sewers; (*e*) by discharge to tidal waters.

The discharge of trade effluents to public sewers is governed by the provisions of the Public Health (Drainage of Trade Premises) Act, 1937, and it will suffice here to state that all trade effluents (with the exceptions of (i) laundry waste, (ii) trade effluents which are the subject of agreements made between the trader and a local authority before July 1, 1937, and (iii) trade effluents discharged to a sewer at some time within the period of one year ending March 3, 1937) must be discharged from trade premises into a public sewer of a local authority (*a*) with the conditional or unconditional consent of the local authority given after the authority have been served with a trade effluent notice, or (*b*) in accordance with trade effluent byelaws, or (*c*) by agreement between the local authority and the trader. Once a trade effluent has entered the sewer it mixes with the sewage effluent and is treated at the sewage disposal works and is ultimately discharged to a watercourse in the form of treated sewage effluent.

Trade effluents dispatched direct to a stream with or without prior treatment (this depends on the type, volume and strength of the particular waste) come within the ambit of s. 7 of the Act of 1951 (discussed hereafter), and the discharge of certain trade wastes to watercourses is either restricted or prohibited under statute, *e.g.* s. 50 of the Lighting and Watching Act, 1833, s. 68 of the Public Health Act, 1875, and s. 56 and sch. 3, s. 32 of the Gas Act, 1948, as regards gas waste products; the Alkali, &c. Works Regulation Act, 1906, as to alkali waste; s. 15 of the Electricity (Supply) Act, 1919, concerning cooling water for generating stations. *(To be concluded)*

RETURN OF LIBRARY BOOKS

At p. 610 *ante*, we spoke of a topic with which we had dealt fully three years earlier, that of so-called "fines" exacted by library authorities without statutory authority. We called attention to a possible method of securing the result at which the system of exacting fines is aimed, without contravention of the law. We were dealing, as we made clear at the end of our short article, with the position under the general law; that is to say at common law, which precludes the charging of fines, and within the framework of the Public Libraries Acts, 1892 to 1919, which give no power to do so. We are indebted to a London correspondent for informing us that since December last year library authorities in London have had special powers, by virtue of the London County Council (General Powers) Act, 1955. Section 37 of that Act, of which the marginal note is "return of library books, etc.," gives a power which, unless there be some similar local Act elsewhere, is at present unique. The abbreviation, "etc.," in the marginal title of the section indicates that the section extends to all articles borrowed from a library as defined in subs. (1).

Specifically, that subsection defines the word "article" to include a book or gramophone record. We are not sure what other articles might be lent by a library authority by virtue of the Public Libraries Acts, 1892 to 1919—perhaps there may be maps, diagrams, and pictures, not in the form of books. Subsection (1) also limits the powers of the section to a library maintained under the Acts of 1892 to 1919 by a library authority, either alone or in combination with another, and a library maintained under those Acts any part of the cost of which is borne by a library authority. The expression "a library authority" is in turn defined by reference to the Acts. Subsection (2) enacts that a borrower shall not be entitled to retain an article after the expiry of a period fixed by the library authority, but in case of a book they may not fix a shorter period than 14 days. Subsection (3) gives the library authority power to prescribe a reasonable sum, in respect of each day or week or part of a week, during which a borrower fails to return an article after the due time, and to recover that sum from the borrower. It is provided that in case of a book the sum prescribed shall not exceed 6*d.* in respect of a week or part of a week. The right of recovery of a sum of money given by this subsection is expressed to be without prejudice to any other powers, so that, as we explained at 117 J.P.N. 785, the library authority can still resort to the county court for recovery of the article or its value. Two points arise on this subsection. The proviso limits the sum which may be prescribed by reference to a week or part of a week, whereas the body of the subsection gives power to prescribe it in respect of a day or week or part of a week. The effect of omitting reference to a "day" from the proviso may be that, in case of a book retained for eight days, the limit is still 6*d.*, although it could be 1*s.* for nine days, but we are inclined to think this is the wrong interpretation. In other words, we think the library authority can prescribe 6*d.* for a week or part of a week, even though the part be a single day, although they can equally prescribe a sum for each day if they wish, subject to a limit of 6*d.* for the week. Secondly the subsection does not give a power of summary recovery, so that it seems that proceedings can only be taken in the county court. In many cases this last point may be academic, because subs. (5) declares that, where a library authority become entitled under subs. (3) to recover any sum from any person, he shall not until that sum has been paid have a right to borrow any other article from any library maintained wholly or partly by the same library authority. This sanction is however not complete, which is why we said the point about procedure for recovery was academic in many cases, not in all. The borrower may not wish to borrow other books or articles from the same library authority, especially in London where many persons enjoy borrowing facilities in the borough where they work as well as where they live. Moreover, the defaulting borrower can not be shut out from the reference libraries and reading rooms. Subsection (4) enacts that a sum recoverable under subs. (3) by two or more library authorities may be recovered by any one of them.

Although the section as a whole may not be quite water-tight, it is, we should think, likely to be followed in further local legislation. It is of particular interest to us, because we find the London county council on behalf of all library authorities in the county acting so soon upon our own suggestion made at 117 J.P.N. 653, that legislation would be useful, a suggestion which some of our readers thought unnecessary. Upon a minor and incidental point, it may be mentioned that the London section does not use the word "fine" to describe the payments which it authorizes, and this (we think) is just as well, inasmuch as that word is nowadays regularly used to describe a sum of money ordered to be paid in judicial proceedings.

NOTICES

The next court of quarter sessions for the city of Coventry will be held on Tuesday, November 20, 1956, at the County Hall, Coventry, commencing at 11 *a.m.*

The next court of quarter sessions for the city of Winchester will be held on Thursday, November 29, 1956 at the Guildhall, Winchester, commencing at 10.45 *a.m.*

The next court of general quarter sessions for the city of Hereford will be held on Friday, November 30, 1956 at the Shirehall, Hereford, commencing at 10.30 *a.m.*

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Hallett and Donovan, JJ.)

WALTER WILSON & SON, LTD. *v.* SUMMERFIELD

October 19, 1956

Docks—Safe means of access—Ship's accommodation ladder or gangway to be provided where reasonably practicable—Ladder to be provided in other cases—Breakdown of gangway provided by owner—Devolution of duty on persons employing labour—Provision of ladder—Onus of proof—Factories Act, 1937 (1 *Edw.* 8 & 1 *Geo.* 6, *c.* 67), *s.* 130 (1)—*Dock Regulations*, 1934 (*S.R. & O.* 1934, *No.* 279), *reg.* 9, *reg.* 50.

CASE STATED by a metropolitan magistrate.

At Tower Bridge Magistrate's Court an information was preferred by the respondent, Summerfield, charging the appellants, Walter Wilson & Son, Ltd., for that they, on February 16, 1956, at Canada Dock, Surrey Commercial Docks, were employers and employed persons carrying on processes to which s. 105 of the Factories Act, 1937, and the Docks Regulations, 1934, applied, namely, unloading the *s.s. Torun* at Canada Dock; that on the said date there were not safe means of access as required by reg. 9 of the regulations; and that they failed to carry out their duty under reg. 50, whereby they were guilty of an offence contrary to s. 130 (1) of the Factories Act, 1937.

Regulation 9 provides: "If a ship is lying at a wharf or quay for the purpose of loading or unloading or coaling, there shall be safe means of access for the use of persons employed at such times as they have to pass from the ship to the shore or the shore to the ship as follows—(*a*) where reasonably practicable the ship's accommodation ladder or a gangway or a similar construction . . . (*b*) in other cases a ladder of sound material and adequate length which shall be properly secured to prevent slipping."

By reg. 50: "If the persons whose duty it is to comply with regs. 9, 10 and 12 fail to do so, then it shall also be the duty of the employers of the persons employed for whose use the means of access . . . are required, to comply with the said regulations within the shortest time reasonably practicable after such failure."

According to the facts found by the magistrate, the ship was lying alongside the quay at Canada Dock and was moored to it. The ship was unloading a cargo of timber and the appellants were the stevedores employed in unloading her. During the course of the unloading and before 11 o'clock on February 16, 1956, when the inspector came on the scene, the ship's gangway, which had been the means of access for the dockers to get on the ship, broke. When the inspector arrived the means of access provided was a ladder.

The magistrate was of opinion that, after the gangway broke, there was *prima facie* a failure of the owner, master or officer in charge to comply with reg. 9 (*a*) of the regulations; that before the men finished work on February 16 there was *prima facie* a failure on the part of the appellants to comply with reg. 50; that it was not for the respondent to prove that a gangway or accommodation ladder was available to the appellants and that the onus was on the appellants to prove that it was not reasonably practicable for them to comply with reg. 9 (*a*); that, they having taken no steps whatever to provide a gangway or ship's accommodation ladder and having failed to call any evidence that it was not possible to obtain such on February 15, the appellants had failed to answer a *prima facie* case of failure to comply with reg. 50 and had failed to discharge the onus of proof. He, accordingly, convicted the appellants, who appealed.

Held, that the onus of proof was on the appellants to prove that it was not reasonably practicable to use a gangway; that the magistrate was right in holding that they had not discharged that onus and were not justified in using the ladder; and that, accordingly, there was a default on their part. The conviction was, therefore, right and the appeal must be dismissed.

Counsel: *Durand* for the appellants; *W. Gumbel* for the respondent.

Solicitors: *Chalton Hubbard & Co.; Solicitor, Ministry of Labour and National Service.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Collingwood, J.)

WOOD *v.* WOOD

October 8, 9, 19, 1956

Husband and Wife—Maintenance—Discharge of order—Decree of divorce granted to husband by foreign court of competent jurisdiction—Wife ignorant of proceedings until after decree—No evidence of law of foreign country as to wife's rights—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 *Vict. c.* 39), *s.* 7.

APPEAL from a metropolitan magistrate.

The parties were married in 1945, the husband being of English nationality and domicil. On February 7, 1950, the wife obtained under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, a maintenance order on the ground of the husband's desertion. In March, 1954, the husband went to live permanently in Las Vegas and acquired a domicil of choice in the state of Nevada. In September, 1954, the court in Las Vegas granted him a decree of divorce on the ground that he and the wife had not lived together for three years. She had no notice of the proceedings in that court as service was effected by advertisement in a Las Vegas newspaper. The husband then applied to the magistrate's court under s. 7 of the Act of 1895 for the discharge of the maintenance order of February 7, 1950. There was no evidence before the magistrate as to the law of Nevada regarding the rights of a wife to maintenance or alimony, and he, holding that the power to discharge a maintenance order was discretionary, in the exercising of that discretion dismissed the husband's application.

Held: the order would be discharged since the marriage had been dissolved by a foreign court of competent jurisdiction, the fact that the method of service had been ineffective being irrelevant.

Counsel: *Hawser* for the husband; *D. Henderson* for the wife.

Solicitors: *Tringhams*; *J. C. Clifford Watts.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

ANNUAL REPORT OF THE MINISTRY OF HEALTH

Part I of the report of the Ministry of Health for the year ended December 31, 1955 refers first to the National Health Service and then to Welfare, Food and Drugs and Civil Defence. The annual report of the chief medical officer will be published separately.

The total cost of the services under the National Health Service Acts amounted, for England and Wales, to about £495 million in the year ended March 31, 1955, of which about £388 million was met by the Exchequer. The total cost was about £22 million more than in the previous year. The gross maintenance costs of the hospital service was about £281 million of which 61·4 *per cent.* was for salaries and wages; 12·2 *per cent.* for provisions; and 7·3 for fuel, light, power, water and laundry. There was a reduction in hospital waiting lists from 474,000 at the end of 1954 to 453,000 a year later. The waiting-list for chronic sick hospitals, where a long wait may mean real hardship, was reduced by four *per cent.* The number of in-patients showed a substantial increase due almost entirely to a reduction in the average length of stay of each patient. The first major new hospital building programme since the war has begun and in two years will total £17½ million, out of a programme suggested by hospital boards of some £70 million. The special programme for additional mental and mental deficiency hospital accommodation reached its peak in the last financial year and it was estimated that some £1½ million would be expended in the year.

The most striking feature of the year in the hospital situation for the treatment of tuberculosis was the complete swing-over from the acute shortage of accommodation in the early years of the National Health Service to a redundancy of beds as a result of the fall in demand.

Turning to the provision of hearing-aids it is noted that the number of people fitted with aids for the first time was 53,617 bringing the total since the beginning of the National Health Service to 466,195. There is also a satisfactory report about the national blood transfusion service in which there was a net increase of 50,815 donors. But there is need for more donors to meet the ever increasing demands.

Mental Health Services

At the end of 1955 there were 139,440 patients in the designated mental hospitals excluding former public assistance institutions. This represented an overcrowding of 17,965 beds. It is pointed out that undue restriction of space not only creates adverse conditions for the patients themselves but also adds seriously to the burdens of the staff. The problems of the mental deficiency hospitals were similar. They were overcrowded by 8·3 *per cent.* Reference is made to the accommodation provided for medical treatment, without formal detention, in short-stay psychiatric units for old people and in long-stay annexes for elderly mentally infirm patients. In some instances detached villas within the curtilage of a mental hospital, but away from the main buildings, have been withdrawn from the statutorily designated hospital so that patients can be received there outside the requirements of the

Lunacy and Mental Treatment Acts but can have available to them the psychiatric resources of the hospital. The psychiatric out-patient clinics are also expanding in numbers and in the scope of their work through co-operation between the hospital, local health and education authorities. Tribute is paid to the valuable work done by the various voluntary organizations which help to bring life in hospital as near as possible to life in the general community and so to adjust the patient to normal living. But it is emphasized that equally important is the help which voluntary workers give in enlightening the public mind about mental and mental deficiency hospitals and in removing popular prejudice against them.

The chronic sick

Special attention is given in the report to the need for developing the services for the chronic aged and in this connexion reference is made to the surveys carried out throughout the country by officers of the Ministry. Nearly two-thirds of the chronic sick beds were occupied by women. In some areas there is a deficiency of beds but the Ministry think it doubtful whether, taking the country as a whole there is—or need be—any real shortage; even although there is a substantial waiting-list. The Ministry are satisfied that many chronic sick waiting-lists are grossly inflated. The surveys showed that in some areas patients, for whose admission their general practitioner had applied, are visited in their homes by members of the hospital staff, who can assess their relative priority on both medical and social grounds. But in other areas there is very little domiciliary vitising of patients to be admitted and little or no effort to keep waiting-lists up-to-date.

The question of the need for some patients to remain in hospital is also considered. It was estimated that at the time of the surveys nearly 4,500 patients occupying eight *per cent.* of the chronic sick beds, no longer required hospital care but could not be discharged because other suitable care and accommodation was not available for them. At the same time, it was estimated that about 2,000 old people in welfare accommodation provided by the local authorities were too sick to be properly cared for there and ought to have been in hospital. Exchanges between hospital and old people's homes are frequent, but in the view of the Ministry there is unquestionably room for improvement. In some areas the appointment of hospital almoners specially charged with the care of old people has helped to improve the rate of discharge. It has been estimated also that there are 3,000 patients of pensionable age in mental hospitals who could be more suitably cared for in chronic sick hospital beds, long-stay annexes or old peoples' homes.

On the care provided for chronic sick elderly patients it is disquieting to learn from the report that, in the view of the Ministry, little notice has been taken in many areas of modern developments in geriatric work and comparatively little attempt made to provide the active treatment which can both restore the patient to a reasonable way of life outside the hospital and free his bed for another patient whose need may be great. But the surveys showed that in some areas the amount of treatment which could be provided was small because of the shortage of medical and nursing staffs, as also of staff for ancilliary services. It is shown that by the development of out-patient services, hospitals can do a great deal to further the primary object of all services for the chronic sick—to keep them out of hospital as long as possible and to get them out of hospital as quickly as possible.

In addition to the hospital services, the surveys were designed to assess the arrangements for liaison between them and the home health services of the local health authorities and the welfare homes of the local welfare authorities. As stated in the report, the need for very close co-ordination of all the services—including those provided by general practitioners and by voluntary organizations—is self-evident. From many areas the surveyors reported satisfactory co-operation and successful arrangements such as the joint appointment of consultants by hospital and local authorities and the attachment of local health visitors to hospitals. It is extraordinary that at this late stage in the development of the health services it should be necessary for it to be stated in the report that from too many areas the surveyors reported that there was much room for improvement. We presume that in these cases the Ministry has drawn attention of the authorities concerned to the necessity for taking action.

Local health and welfare services

In describing the development of the local authority health services it is stated that the number of home nurses increased from 9,642 to 9,884 and the number of home helps increased from 2,955 whole-time and 30,353 part-time to 3,055 and 32,850 respectively. The demand on this service by the aged, infirm and chronic sick continued to increase. The demands on the local ambulance services also increased. Liaison between hospital and ambulance authorities has produced the best results in those areas where the medical officer of health has played an active part in the administration of the ambulance service and is in close touch with the medical staff of the local hospitals; and where hospitals have appointed a transport officer to co-ordinate all requests for ambulances.

Fifty-seven new residential homes were opened during 1955 by local authorities bringing the total number opened since the war to 855 with accommodation for over 25,000 residents. The trend towards an increasing degree of infirmity and higher age ranges in the residents continued. Many local authorities now feel that staff with some nursing training or experience is desirable. Residential accommodation was at the end of the year being provided for 71,434 people, some 2,000 more than the previous year.

In referring to the welfare of old people in their own homes it is emphasized that a co-ordinated partnership of statutory and voluntary domiciliary services is the key to providing the right service where it is needed and at the right time; and also in insuring that the services available to old people are widely known. In this connexion attention is drawn to the value of old people's weeks which have been held with great success in Wales for several years and also recently in some parts of England.

Special attention is drawn to the importance of creating an effective voluntary visiting service but it is shown that to provide a really effective service a whole-time worker is required at a central point and that in really rural areas the special difficulties of organizing a service have still to be fully overcome. Reference is also made to the value of the help given by old people's welfare committees which increased in number from 1,150 to 1,280. As to clubs, the provision of which has been stimulated by grants from the King George VI Foundation, it is pointed out that those which open daily or at least several times a week and provide a mid-day meal appear to be the most popular in urban areas.

Statistics

There are published with the report appendices giving much useful statistical information including a comparative summary of bed occupancy and staff employed in the hospital service for each of the years during which the National Health Service has been in operation. Further tables give an analysis of the number of practitioners providing general medical services and the number of patients on their lists. Other tables give the cost of the ambulance service in each local health authority area. These should be studied by those concerned as the variations are very great and seem to call for special criticism in some areas. For instance the cost per patient varies from 7*s.* 4*d.* to 37*s.* 11*d.*; and even in the more urbanized counties from 8*s.* 10*d.* to 22*s.* 3*d.* The variations in the five largest county boroughs are from 8*s.* 10*d.* to 14*s.* 6*d.* and in the 12 next largest county boroughs from 7*s.* 4*d.* to 13*s.* 4*d.* In all other county boroughs the variation was from 7*s.* 5*d.* to 25*s.* 4*d.*

SCARBOROUGH ACCOUNTS, 1955–56

This shrewdly run northern resort experienced a good year, the excellent summer of 1955 enabling record business to be done. Borough Treasurer Mr. H. Wilson, F.I.M.T.A., reports that the catering department was able to transfer £11,000 in aid of rates, the net profit showing an increase of £5,000 over the previous year: in addition to this payment substantial rents are paid to other corporation departments and considerable contributions made to central administration expenses and general advertising so that this activity is of substantial benefit to the Scarborough ratepayers. The catering business, however, is only one of many undertakings of which Alderman F. C. Whittaker, finance committee chairman, may be proud. Entertainments takings established a new record at £178,000 and this activity provided £23,000 for rate relief, in addition to large payments to the general rate fund as rents and contributions to central expenses. Transport, provided under agreement by a private bus company which has to make a payment to the corporation partly on a mileage basis and partly on an apportionment of profit, contributed £5,600 in rate aid.

The general financial position of the borough is healthy, balances amounting to £129,000 at the year end. A rate of 23*s.* 9*d.* was levied of which 16*s.* 9*d.* was for the North Riding county council, and the average ratepayer who in Scarborough occupied in 1955–56 a house rated at £21 paid a weekly sum of 9*s.* 7*d.* in rates. As a result of revaluation the penny rate product has increased from £2,360 to £3,520 and the rate poundage has dropped to 16*s.* 4*d.*

There are 13,500 domestic hereditaments in the town and the council have provided 3,400 houses and flats. The transactions on the housing revenue account for the year resulted in a net surplus of £12,000, bringing the accumulated surplus at March 31 to £22,000. A differential rent scheme was introduced in February, 1955, and in its first full financial year produced additional revenue of £25,000 over and above basic rent income. Cushioned by the mortgage loans pool operated by the borough treasurer average rate of interest charged to the housing account rose only by ·05 *per cent.* to 3·31 *per cent.* in spite of the steep rises in market rates. The charge to the rate fund was restricted to the statutory contribution of £18,000, equivalent to a rate of 7¾*d.*: by comparison rents produced £151,000.

The policy of selling houses to tenants has continued and during the year a further 13 houses were sold; three outright and ten by deferred payments. 79 property owners were awarded improvement grants and 20 guarantees given to building societies.

Of the total loan debt outstanding at March 31 of £4¼ million housing accounted for over £3 million. Average rate of interest paid at the same date was 3½ *per cent.*

This well produced booklet, explaining in alphabetical order the salient points of the corporation's activities and containing all the vital figures is an excellent example of a first-class low cost production.

PERSONALIA

APPOINTMENTS

Mr. John Robertson Dunn Crichton, Q.C., has been appointed an additional Judge of the High Court of Justice of the Isle of Man, to be styled "Judge of Appeal," in succession to Mr. Neville Jonas Laski, Q.C. Mr. Laski is now recorder of the Crown Court of Liverpool.

Mr. Myer Alan Barry King-Hamilton, Q.C., has been appointed recorder of Gloucester. Mr. King-Hamilton has been recorder of Hereford since June last year. He is also a deputy chairman of Oxfordshire quarter sessions. While at Cambridge he was president of the Union. He was called to the bar in 1929 and took silk in 1954. He served in the R.A.F. during World War II and for six years was a member of the Finchley borough council. Mr. King-Hamilton is a Freeman of the city of London. He is 51, married, with two daughters.

Mr. R. W. T. Cass has been appointed deputy town clerk of Poole, Dorset. He was assistant solicitor to Mr. Percy Idle, O.B.E., Hastings, in 1947. He joined Plymouth city council as assistant solicitor in 1947, and in 1954 was promoted senior assistant solicitor, which post he has held up to date. He will be taking up his new appointment on December 17, next.

Mr. S. A. Fleet, at present legal and conveyancing clerk to Horsham, Sussex, urban district council, has been appointed legal and general assistant to Crawley, Sussex, urban district council and will commence duties on December 3, next.

Mr. Derek Gladstone has been appointed second assistant solicitor to the county borough of South Shields. He was admitted in December, 1954 and has recently completed two years National Service with H.M. Forces.

Mrs. R. K. Clark has been appointed a whole-time probation officer in the London probation service. Mrs. Clark served as a probation officer in the Cornwall combined area from May, 1954 until she took up duty in London on October 15, last.

Miss K. D. Wright has been appointed a whole-time probation officer in the London probation service. Miss Wright served as a probation officer in the Hampshire combined area from February, 1947 to August, 1951, and as a senior area visitor of the children's department, Hampshire county council, from August, 1951 until she took up duty in London on November 1, last.

RETIREMENTS

Sir Henry Gregory, K.C.M.G., C.B., formerly second secretary to the Board of Trade and who, since his retirement from that post has been acting as adviser on copyright to the Board, has relinquished his post. Sir Henry, who is 66, joined the civil service in 1908. He is a former Commissioner of Customs and Excise and also served in the Ministry of Supply as well as in the Board of Trade. He was Controller of the Clearing Offices 1937-8 and was Controller General of the Trading with the Enemy Department during the war.

Mr. W. F. Cresswell, C.B.E., senior official receiver in the Bankruptcy (High Court) Department will retire on December 31, 1956. Mr. G. F. Morris, official receiver in the Companies (Winding-Up) Department, will succeed Mr. Cresswell as senior official receiver in the Bankruptcy (High Court) Department with effect from January 1, 1957.

Mr. John Smith, O.B.E., clerk to Penrith, Cumberland, rural district council since 1900, when he was also appointed clerk to the then local board of guardians, has announced his decision to retire, and the council have accepted his resignation. During his long career in local government work, Mr. Smith has played a notable part in vagrancy welfare work. He continued as clerk to the board of guardians until the transfer of Poor Law administration to the county council. For many years he was secretary of the North Western Vagrancy Committee which operated from Cheshire to the Scottish Border, and he was also chairman of a committee which met at the Ministry of Health on administration problems. His skill in financial affairs largely made possible the rural council's progressive work in provision of public water supplies and village sanitation before such schemes carried any government grant. Mr. Smith is 88 years of age.

OBITUARY

Mr. B. H. Waddy, M.C., Q.C., recorder of Margate from 1944 until 1953, has died at the age of 62. Mr. Waddy was educated at Cheltenham and Worcester College, Oxford. During the 1914-18 War, he saw active service in France and Italy, winning the M.C. Mr. Waddy was called to the bar by the Inner Temple in 1920 and practised on the South-Eastern circuit, where he appeared from time to time at Kent quarter sessions. He took silk in 1951. Mr. Waddy was appointed recorder of Margate in 1944, resigning the office in 1953.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

The Queen's Speech opening the new Session of Parliament foreshadowed that the Government would bring forward proposals to amend the law of homicide and to limit the scope of capital punishment.

The Bill itself was introduced in the Commons the following day and was due for the Second Reading on November 15.

Part 1 of the Bill provides for amendments of the law of murder in England and Wales. Clause 1 provides for the abolition of the doctrine of constructive malice. Clause 2 provides that a person suffering from such abnormality of mind, arising from specified causes, as substantially impairs his mental responsibility shall be liable to be convicted of manslaughter, not murder.

Clause 3 provides that where there is evidence that the accused was provoked (whether by words or conduct or both) to lose his self-control, it shall be left to the jury to decide whether the provocation was enough to make a reasonable man do as he did; if they so decide the verdict will be one of manslaughter and not of murder. In deciding this issue the jury are to act according to their own opinion of the effect on a reasonable man of the provocation, whether or not given by words alone. Clause 4 provides that a person who kills another, or is a party to the other killing himself or being killed by a third person, shall be liable to be convicted of manslaughter, not murder, if he was acting in pursuance of a genuine suicide pact.

Part II of the Bill, which applies to Scotland as well as England and Wales, restricts the liability to suffer the death penalty on conviction of murder.

Clause 5 preserves the death penalty for murders in the course or furtherance of theft; murders by shooting or by causing an explosion; murders in the course of resisting arrest or of escaping from legal custody; murders of police officers in the execution of their duty and persons assisting them; and murders by prisoners of prison officers in the execution of their duty and persons assisting them. Subsection (2) provides that where two or more persons are guilty of such a murder, it shall be capital murder only in the case of a person who actually kills, or inflicts or attempts to inflict serious injury on the victim, or who uses force on the victim in the course of an attack on him.

Clause 6 (1) preserves the death penalty where a person convicted of murder has previously been convicted of another murder done on a different occasion, and both murders were done in Great Britain. Clause 6 (2) enables two or more murders to be charged in the same indictment and (unless separate trials are desirable in the interests of justice) to be tried together; where a person is convicted of two murders tried together, but done on different occasions, cl. 6 (1) is to apply as if one conviction had preceded the other.

Clause 7 provides for the abolition of the death penalty in cases of murder not falling within cl. 5 or 6.

Clause 8 provides that a person convicted of murder by court-martial shall not be liable to suffer death unless the circumstances of the crime are such that if he had committed it in England he would have been guilty of capital murder under cl. 5; this provision will apply whether the court-martial is sitting within or outside Great Britain Clause 9 provides that where a court (including a court-martial) is precluded by Part II of the Bill from passing sentence of death the sentence shall be imprisonment for life; a consequential amendment of the relevant provision in the Children and Young Persons Acts ensures that a person under 18 at the time of the offence will continue to be liable only to detention during pleasure and will not be sentenced to death or imprisonment for life.

Part III makes amendments in the law as to the form and execution of sentence of death for murder in England and Wales.

Clause 10 provides for a shortened form of sentence of death which does not refer to the manner of execution or the place of burial. Clause 11 provides that notices of execution shall no longer be required to be posted at the prison, and that the Secretary of State shall publish the time and place fixed for the execution and, after execution, the fact that it has taken place and a copy of the coroner's inquisition. Clause 12 provides, with a view to avoiding double executions, for the removal of any prisoner who has been sentenced to death from the prison in which he is confined and for his execution in some other prison.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Wednesday, November 7

HOMICIDE BILLS—read 1a.

MAGISTERIAL LAW IN PRACTICE

Evening Standard. August 31, 1956

JAILED FATHER PLEADS "DONT TAKE MY SON AWAY"

Parents win fight against council

A father who is serving 14 years in jail for his part in a hold-up pleaded today: " Because I am being punished, do not punish my children by taking them away from their natural guardian—their mother."

The father went from Parkhurst Jail to a Surrey juvenile court escorted by two warders.

He sat beside his wife while the magistrates considered whether Surrey county council should be allowed to assume parental rights over his six year old son.

The boy, in blue shorts and green blazer, was called into the court for a few mintues. He smiled at his father, who was dressed in civilian clothes. As the boy left the court his father reached across to grasp him by the hand.

Parents object

Mr. A. N. Mundy, for the county council, said that in July the council passed a resolution assuming parental rights. The boy's parents wanted the magistrates to rescind the council's resolution.

The child, he said, had been in the care of the county since March and still was.

The boy's older brother had been before a juvenile court and had been placed in the care of the county.

" The father has a long criminal record," said Mr. Mundy. " He has placed himself in a position where he cannot exercise any proper parental rights."

Bad condition

The mother's home had been visited by a probation officer, who said she had never seen a place in a worse condition.

There had been a lack of care so as to make her unfit to have care of the child.

The father told the magistrates: " I love my wife and children. I wish that my son should be with his mother."

" As regards my elder son—he would never have got into trouble if I had been there. Although I am a bad character myself, I want my sons to grow up properly. I sent them to a private school and did all I could for them."

Good mother

His wife had always been a good mother and he wanted the child to be with her.

" Because I am being punished do not punish my children by taking them away from their natural guardian—their mother."

The mother told the court that she wanted to have the child with her when it was possible. But at present she was living with a friend.

The magistrates decided not to confirm the county council resolution.

" The position is the parents can legally have the child at any time " said Mr. Mundy.

The father, who was at the door with the two warders, stopped, turned round and said " Thank you, your worships."

The Children Act, 1948, is " an Act to make further provision for the care or welfare, up to the age of 18, and, in certain cases, for further periods, of boys and girls when they are without parents or have been lost or abandoned by, or are living away from, their parents, or when the parents are unfit or unable to take care of them, and in certain other circumstances . . ."

Under s. 1 it is the duty of the local authority to receive such children into their care. They are to keep the child in their care so long as his welfare requires it, and they are to endeavour to find a home for him. They cannot keep the child if any parent or guardian desires to take over the care of the child.

Under s. 2 the local authority may pass a resolution in respect of a child in their care under s. 1 assuming parental rights and powers, if it appears to them " (*a*) that his parents are dead and that he has no guardian; or (*b*) that a parent or guardian of his . . . has abandoned him or suffers from some permanent disability rendering the said person incapable of caring for the child, or is of such habits or mode of life as to be unfit to have the care of the child."

Notice of this resolution, with an intimation of his right to object, must be given to the parent or guardian if he can be found. If, not later than a month after the notice has been served on him, the parent or guardian serves notice in writing on the local authority objecting to the resolution, the resolution lapses on the expiration of 14 days from service of the notice, unless within that time the local authority applies to a juvenile court by way of complaint for the resolution to be upheld.

In this case the juvenile court ordered that the resolution should lapse. Under the proviso to subs. (3) of s. 2 they could have ordered that the resolution should not lapse if they had been satisfied " that the child had been, and at the time when the resolution was passed remained, abandoned by the person who made the objection or that that person is unfit to have the care of the child by reason of unsoundness of mind or mental deficiency or by reason of his habits or mode of life."

Normally a resolution under s. 2 remains in force until the child attains the age of 18, but at any time application may be made to a juvenile court for its rescission, or the local authority may rescind it if that appears to them to be for the benefit of the child (s. 4).

The Western Morning News. September 24, 1956

1,700 POSTCARDS TO BE DESTROYED, COURT ORDERS

A suggestion of victimization was refuted by the police at Ilfracombe on Saturday, when the magistrates, under the chairmanship of Mr. F. G. Reed, ordered the destruction within 14 days of 1,700 postcards alleged to be obscene which were seized by the police from premises owned by Mr. Charles Haddon Fellowes, of 101 High-street, Ilfracombe, on August 31.

Fellowes appeared before the magistrates to show cause why the postcards should not be destroyed, and he asked why out of 40 shops in the town selling the same type of postcard, he had been singled out. " It looks like victimization " he said.

Supt. H. G. Jewell, who prosecuted, said it was a remarkable coincidence that when the detective came to Ilfracombe he visited shops belonging to Fellowes, and they were all in different parts of the town. There was no victimization.

" No Censorship "

The detective visited three premises and seized a number of postcards, and he was invited by Fellowes to visit his fourth shop which sold postcards. Altogether, 1,700 were seized.

Fellowes said it seemed a pity that there was no censorship on the publishers. " No one seems to bother about that, only the tax that has to be paid on them. What I want to emphasize is that it looks as if I am the only one selling this kind of postcard," he said.

Ordering the destruction of the postcards, the chairman said the bench was agreed that some form of censorship should have been exercised on the people who published them.

Fellows was ordered to pay £1 0s. 6d. costs.

In *Cox* v. *Stinton* [1951] 2 All E.R. 637; 115 J.P. 590, Lord Goddard, C.J. said, " In my opinion the Obscene Publications Act, 1857, provides its own procedure and is a complete code in itself."

We are still of the opinion, expressed in our answer to P.P. 7, on p. 126 of our 1952 volume, that the effect of *Cox* v. *Stinton* is that the Magistrates' Courts Act does not apply to proceedings under the Obscene Publications Act, 1857. There is no power given by the 1857 Act to award costs and, therefore, no costs can be ordered.

Evening Argus, Brighton. September 11, 1956

POLICEMEN CARRY HIM OUT OF COURT

After hearing Eastbourne magistrates' decision on a maintenance arrears summons, James Edwin Brown, of The Broadway, Southall, Middlesex, collapsed as he was leaving the court and had to be carried out by two policemen.

Brown was summoned for arrears of £36 17s. 6d. on an order in respect of his two children.

The magistrates sentenced him to three months' imprisonment, the sentence to be suspended all the while he pays the 30s. of the order plus 7s. 6d. a week off the arrears.

While he was giving evidence, Brown was asked how much money he had brought with him.

At first he said he had nothing, but after questioning admitted having " about £2."

He was then ordered to leave the court to be searched by police. He had £3 9s. 3d. in his possession.

By virtue of subs. (1) of s. 68 of the Magistrates' Courts Act, 1952, where a magistrates' court has adjudged a person to pay a sum of money by a conviction, or on the enforcement of an affiliation order, an order under the Summary Jurisdiction (Separation and Maintenance) Acts, an order under the Guardianship of Infants Acts, or a contribution order under s. 87 of the Children and Young Persons Act, 1933, the court may order him to be searched.

Subsection (2) provides that any money found on the arrest of a person adjudged to pay such a sum, or on such a search, or on his being taken to any prison or other place of detention in default of payment, may, unless the court otherwise directs, be applied towards payment of the sum adjudged. Any balance must be returned to the person searched.

By subs. (3) the court must not allow the money found on a person to be applied towards payment if it is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention.

By r. 52 of the Magistrates' Courts Rules, 1952, any direction given under s. 68 (2) of the Act must be indorsed on the warrant of commitment.

REVIEWS

The Law Relating to Monopolies, Restrictive Trade Practices and Resale Price Maintenance. By Viscount Hailsham and Robin McEwen. London: Butterworth & Co. (Publishers) Ltd. Price 22s. 6d.

The Restrictive Trade Practices Act, 1956, breaks nearly new ground in legislation. Public control of alleged monopolies and restrictive practices is, indeed, not new. In some forms it goes back at least to Tudor times, and within the last few years there have been the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, and the Monopolies and Restrictive Practices Commission Act, 1953. These may be regarded as exploratory provisions: if they had produced all the results desired further legislation might have been avoided, but they left a pretty general impression that Parliament must further intervene to prevent private enterprise from strangling itself. The Bill for the Act of 1956 was very thoroughly discussed in the House of Commons, and it was evident that the form which legislation should take was a matter of anxiety to thoughtful persons, in industry as well as in Parliament; the Act in consequence bears many of the marks of compromise. The learned authors of the present textbook devote a good deal of space to explanation of its background, without which the nature of the compromises enacted could hardly be understood. The main body of the work consists of narrative explanations, of the manner in which different portions of the Act of 1956 will work. Under the general heading " Control and Investigation of Monopoly Conditions," the functions of the Monopolies Commission, as it will be in future, are explained, and the constitution of the Commission is set out—the alteration of its constitution is one of the main features of the new Act. The changes partly result from the alteration of the substance of the law, by which the Commission is no longer to investigate references relating to registered agreements.

In part II of the work the reader will find a full account of the machinery of the new Restrictive Practices Court, and its function in registering agreements. The court is to work under rules made by the Lord Chancellor, which will provide for interrogatories and other methods of discovery. The essential feature of this part of the new Act is judicial determination of what constitutes the public interest, with the bringing in of one of the Judges for the purpose. Determining the manner in which this was to be done was one of the most difficult tasks which Parliament had to perform; it must be admitted that neither the new Act nor the recommendations of the Monopolies Commission (on which some of its provisions are based) have that degree of precision which one would wish to see, in legislation affecting the interests of ordinary traders. Some verbiage may have been unavoidable; the learned authors do their best to cope with such expressions as " control of a preponderant part " of a trade or business, and the difference between a " serious " effect and a " persistent " effect. No doubt trial and error will be unavoidable, and it will be interesting to see how Judges, still unfamiliar with this sort of legislation, define such expressions when applied to actual agreements or transactions.

The other main portion of the Act of 1956 deals with resale price maintenance—accepting (as presumably one must) the jargon by which restrictions enforced by manufacturers and wholesalers have come to be described. The machinery for enforcing the prohibitions now imposed is based upon that established in the days of the Labour Government by the Act of 1948, relying primarily on civil proceedings by the parties, or injunction at the suit of the Attorney General, and not on prosecution. (It is interesting to note that trade unions can be made amenable to these proceedings, notwithstanding s. 4 of the Trade Disputes Act, 1906). The learned authors suggest that, in principle, a claim for damages may be included where the proceedings are brought by a private person, and that agreements made in contravention of an order of the " competent authority " will be unenforceable as between parties to them.

In this novel field of legislation, imposing restrictions upon practices which are alleged to be restrictive, there may be room for development of case law; there is a potential analogy with the law of rent restriction. It may be that in course of time the present work will have to be expanded, but for the time being it says as much as can be said. The commencement of the Act will be at different dates, and the publishers are to be congratulated on providing the book promptly, so that practitioners can be prepared.

Eldorado Jane. By Phyllis Bottome. London: Faber and Faber. Price: 15s.

Delinquency deserves a worthy evaluation from the novelist. Here, surely, is a subject offering almost unlimited scope to the writer prepared to take pains over technical details, and able to discern the profound spiritual and psychological issues which underlie the irrational conduct of youth. Miss Bottome's new novel leaves one with the impression that a great opportunity has been missed: the technical framework of her story will satisfy no one who has worked in juvenile court or remand home; and her undoubted human sympathies have been half strangled by a tangle of inadequate characterization and falsely executed dialogue. The pseudo-cockney; the arch spelling; the laboured emphasis on dim-wittedness are not impressive.

But these irritations are small compared with the astonishment caused by Miss Bottome's legal procedure. Consider what happens to Jane: arrested in the act of house-breaking, she is taken to the police station, where, early the following morning, she is interviewed by a probation officer, Miss Emsley, who, unbelievably, addresses her as " child." This perspicacious lady is " an adept at asking awkward questions." We are told that this interview lasted an hour and a half. It is " exhaustive questioning." At the end of it the probation officer saw " that there was nothing she could do but accept the appearance of the Magistrates who depended upon her for all their information." The magistrates—two in number—descend upon the police station. What should be a properly conducted trial in a juvenile court is described as " an interview between Miss Emsley and the two magistrates." There follows a visit to the psychiatrist, in the presence of, and interrupted by, the probation officer. The poor girl is then spirited away to the remand home, still in the care of the indefatigable probation officer, who, one month later, takes her to an approved school. On the way there Jane escapes and finds her way back to the old lag who had originally taken her house-breaking. Eventually she gives herself up and completes her spell in the approved school.

It seems clear that Miss Bottome is concerned about the treatment of adolescent girls who fall foul of the law. But she fails to make her grievances clear. If ever there was a girl in need of approved school training it was " Eldorado Jane."

The Changing World and its Effect upon Adolescent Behaviour. By J. F. Wolfenden, C.B.E., M.A. Published by the Clarke Hall Fellowship, Tavistock House South, London, W.C. 1. Price: 2s. 6d.

This is the Sixteenth Clarke Hall Lecture, and the expectations aroused by the name of the lecturer are not disappointed. Mr. Wolfenden's concern is to clarify the intimate relationship between contemporary youth and its environment. He feels that judgments based on comparisons with conditions enjoyed—or endured—by earlier generations are misleading.

In pursuit of this theme Mr. Wolfenden first analyses the principal social changes of the last 30 or 40 years. Education, morality, religion, economics, and technology—all have been radically affected, making " the world of everyday life an incredibly different place from what it was when we were young." Mr. Wolfenden thinks that the speed of these changes is itself an important factor in fashioning the contemporary environment: " the young today expect change. So they have no experience of stability, no interest in it, and no desire for it." This leads to the heart of Mr. Wolfenden's arresting argument. Adolescence is in any event a period of searching change. Now it must be faced in an atmosphere which is itself continuously evolving. There results, in his view, a " double instability," producing inevitably tensions and excitements which strain youthful nervous and emotional reactions to the uttermost.

Yet, Mr. Wolfenden concludes, we must beware of any retreat in face of this difficult challenge. Change, for all its unsettlement, may yet be for the better. And, on the whole, he considers that modern youth is making a brave showing. Furthermore he claims " that they would make a better job of their growing-up if each single adult person recognized a personal responsibility for the elements in the background which are unworthy." Such a conclusion is surely to be welcomed: the problems of youth are inseparable from the larger

dilemmas of contemporary society. The moral, intellectual and spiritual adjustments needed to strengthen the foundation of modern communities must be made by men and women of all ages.

Cruel Parents: Case studies of prisoners convicted of violence towards children. By. T. C. N. Gibbens and A. Walker. Published by I.S.T.D., 8 Bourdon Street, W.1. Price 1s. 6d.

This interesting booklet records the results of an intensive case-study of 39 men and women convicted of cruelty to children involving violence. Every relevant aspect of personality and environment was devotedly explored by the two experts who have jointly written this report. They are reluctant to make extravagant generalisations, but they are clearly concerned about the need for long-term supervision of persons convicted of cruelty to their children. They also plead for better co-ordination of the several remedial agencies available in such cases. They think that authoritative backing is needed by those called on to supervise, and they look for increased co-operation between the N.S.P.C.C. and the probation service.

One hopes that this detailed study will lead to others covering a wider field. In this case the inquiry was limited to cases resulting in imprisonment: this seems an arbitrary classification which may well have excluded many interesting cases. Meanwhile magistrates and social workers alike should read this report with profit.

TUCKING-IN

While world-shaking events take their course abroad, domestic controversy still rages on the perennial question of food. From North Wales comes a resolution passed by the conference of the National Chamber of Trade at Colwyn Bay. It expresses grave dissatisfaction with the policy of the Ministry of Education in regard to "State-trading from schools." This high-falutin' phrase turns out, on analysis, to be concerned, not with the polemics of Karl Marx, John Stuart Mill and Adam Smith, but with an institution familiar to all those who are acquainted with the works of Talbot Baines Reade, Rudyard Kipling and Thomas Hughes, and with the secular writings of Dean Farrar. That institution is the school "tuck shop," and generations of readers of *The Magnet* and *The Boys' Own Paper*, inspired by memories of the corpulent Billy Bunter and his *coterie*, will rise in revolt against the soulless expression "State-trading" as applied to the glorious assortment, the tempting variety, of wares purveyed for the filling of juvenile stomachs in our educational establishments.

Tom Brown's Schooldays (the centenary of which will fall next year) started the school-story tradition, and its author, in the midst of his adult activities as a Q.C., a Bencher of Lincoln's Inn, a County Court Judge, a Member of Parliament, and a supporter of the Trades Union and Co-operative Movements, remained a boy at heart. His angry shade must be storming, in Elysium, at some of the expressions used at the Colwyn Bay Conference, and we can only hope that he will haunt their perpetrators to their dying day. "We do not want" proclaimed the National Union of Retail Confectioners "to swipe lollipops from the mouths of children, but there are sufficient retail traders to cater for them. It is wrong that we, as ratepayers, should subsidize the unfair trading of the 'tuck-shops'." Only one speaker, from Rotherham, remembered that he was a boy once. "It is detrimental to a child," he proclaimed in stentorian tones, "*from an educational point of view*, to deprive him of the chance to buy sweets during break-time." Generations of schoolboys, young and old, will echo this heartfelt sentiment.

The county of Sussex, too, has made its contribution to the bun-fight. The Meat-Traders' Conference at Eastbourne has decided to oppose "any attempt to enforce standards for meat-pies." However carefully the ingredients are weighed, cooking affects their composition, and it would be dangerous to the trade if pie-makers had to run the risk of prosecution over the make-up of their wares. The protest has the support of a number of influential bodies—the National Federation of Meat-Traders' Associations, the Bakers' Federation and the Northern Council of Pork-Butchers. The only interests not represented seem to have been those of the consumer, and it is a pity that his reactions, expressed in two famous literary examples, have been forgotten. The classic instance is, of course, that of Simple Simon, who, for all his ingenuousness, was cautious enough to be guided by the maxim "taste and try before you buy"—the layman's interpretation of *caveat emptor*. The dreadful results of ignoring that solemn warning are described in Shakespeare's *Titus Andronicus*. It is a fine blood-and-thunder tragedy, in the good old Elizabethan manner, and the climax comes in Act V, Scene III, when Titus, dressed as a cook, entertains the Emperor Saturninus and his consort Tamora, Queen of the Goths, to supper. Their enjoyment of the meal is somewhat disturbed by the discovery that Tamora's two sons are missing. On the Emperor's command—

> "Go, fetch them hither to us, presently,"

Titus suavely points to the biggest dish on the table:

> "Why, there they are both bakèd in that pie,
> Whereof their mother daintily hath fed,
> Eating the flesh that she herself hath bred."

(No standard content appears to have been fixed by law in Imperial Rome.) Despite that appalling precedent the delegate from Kidderminster, at the recent Conference, still felt it right to urge that "any proposals laying down a standard meat-content should be fought tooth and nail"—a vivid, but perhaps a not altogether apt, metaphor.

The phrase "tooth and nail" recalls a recent news-item from Italy, which describes the unfortunate effects upon the digestive organs of a too unconventional diet. One Salvatore Scandurra is said to be blessed with two stomachs—the one normal, and the other capable of assimilating indurate objects not generally regarded as edible by the world at large. This convenience has enabled him to make a reasonable living by displaying, to the curious, his omnivorous potentialities, swallowing broken electric lamp-bulbs, old razor-blades, ball-bearings, and other uncompromising solids, with every appearance of enjoyment. He has never actually been heard to say "I'll eat my hat!" but he has transcended even that legendary feat, for on one occasion he broke up into small pieces, and devoured, an entire motor car. Now, after so many victories, he has met his Waterloo as the result of swallowing a two-inch nail, which went down the wrong way and lodged in Stomach Number 1. Like the solicitor in pre-1914 days, who swallowed a half-sovereign, and whose doctors (with the aid of a stomach-pump) were unable to recover more than three shillings and fourpence change, Signor Scandurra faces this occupational risk with intrepid courage.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to " The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Offences—Power to order recognizances.*

At a recent court in my division a farmer was summoned under s. 6, Dogs Act, 1906 and Dogs Amendment Act, 1928 for failing to bury carcasses of sheep. He has been convicted several times for similar offences, the maximum fine for which is £2 on any one day. I suggested to my inspector who dealt with the case that he should discuss with the magistrates' clerk the possibility of binding him over in the sum of say £25, not to repeat the offence. I was told this could not be done. Can I have your advice on the matter? What I have in mind is something on the lines of the prostitute in London who was bound over in a sum far exceeding the maximum penalty to be of good behaviour, and from my previous experience in the metropolitan police, when I think I remember book makers' runners being also bound over in a sum exceeding the maximum penalty and this effectively curbing their activities. ROLE.

Answer

In *R.* v. *Sandbach, ex parte Williams* [1935] 2 K.B. 192; 99 J.P. 251, it was held that a magistrate has the power to order a defendant to enter into a recognizance and to find sureties for his good behaviour if he apprehends that the defendant will do something contrary to law, although the defendant may become liable, in the event of forfeiture of the recognizance, to a penalty greater than that fixed by statute for the offence of which he has been convicted. There appears, accordingly, to be no reason why a court should not consider such a course in this case.

2.—Housing Act, 1936—*Undertakings in respect of unsatisfactory houses.*

I was interested to note P.P. 3 on p. 448, *ante*, and the reference to the previous practical point on p. 204. In this area is a rather isolated cottage, unfit for human habitation, which has been represented for action under s. 11 of the Housing Act, 1936. The cottage is now vacant and the owner is quite willing to give an undertaking not to permit it to be used for human habitation, but desires to use the cottage as a store. He is further prepared to undertake to pull the cottage down should it further deteriorate to a ruinous condition. It is thought that the cottage may provide reasonable storage facilities for a year or two. If the cesser of use as a dwelling-house by reason of a change of use to that of a store removes the building from the category of a " dwelling " so that s. 11 can no longer be applied, could the council enforce the undertaking to demolish the cottage if it falls into a ruinous condition ? The undertaking, if accepted by the council, would be signed over a 6*d.* stamp, and would be in consideration of the council's agreeing to withhold for the time being further action in the making of a demolition order. PEWSOR.

Answer.

No, in our opinion. The undertaking under s. 11 ensures that the building is not used for human habitation until rendered fit, and the owner cannot be tied as to the future of the building where it has become applied to a new use.

3.—Housing Repairs and Rents Act, 1954—*Reconstruction and repair.*

A house in respect of which a demolition order has become operative has recently been acquired by a new owner who is now suggesting that he be allowed to carry out works of repair to render the house fit for human habitation and that the order be then revoked by the council.

Section 5 of the Housing Repairs and Rents Act, 1954, gives power in such a case to permit the execution of works designed to secure the reconstruction, enlargement or improvement of the house.

As the repair works in this case would be extensive, involving *inter alia* the rebuilding of part of the rear wall and re-roofing, your opinion is sought as to whether such works would come within the scope of this section of the Act. PEROW.

Answer.

Yes, in our opinion.

4.—Land Charges—*Private sewer notices—Heading for registration.*

My council has served notices under s. 38 (2) of the Public Health Act, 1936, fixing the proportion of expenses of constructing, maintaining, and repairing a private sewer. These notices appear to be registrable under Part V of the Land Charges Act, 1925, in the register maintained at the Land Registry. Do you agree that they should be registered in class C, sub-class (iii)—general equitable charge? If not, what is the appropriate class? ESTEVE.

Answer.

We agree.

5.—Local Government Superannuation Acts, 1937–53—*Additional part-time appointment—Primary employment unaltered—Transfer value.*

A whole-time officer of a local authority who is a contributory employee obtains an additional part-time appointment with a joint board which has been admitted to a different superannuation fund from the one to which the officer contributes. The district auditor has ruled that he must contribute to the superannuation fund to which the board has been admitted, on his remuneration received as an officer of the joint board from April 1, 1954. The terms of the whole-time appointment have not been altered in any way and his authority have authorized him to accept and carry on the additional appointment. It appears that a transfer value is due under s. 29 (2) of the Act of 1937 from the fund to which he first contributed, and still contributes, to the fund of which the board is an admitted authority, but I am not sure of this and should appreciate an opinion. If a transfer value is payable, on what remuneration should it be based? AIMI.

Answer.

We have called attention before to the ambiguity of the expression " whole-time employment." There may be arguable cases of changing from whole-time to part-time, but here the terms of the primary employment have not been altered, so that he does not seem to have " become a contributory employee in the part-time employment " of his primary authority. We do not think a transfer value is payable.

6.—Night Poaching Act, 1828—*Power of arrest.*

Your views on the following matter, which is causing some controversy and on which the relevant authorities appear to conflict, would be appreciated.

I have always understood that, as far as the Night Poaching Act, 1828, is concerned, the only persons having power of arrest for offences against this Act, are " Owners or occupiers of the land, or of the land adjoining either side of that part of the road or path where the offenders are found, their gamekeepers, servants or assistants, who may apprehend any offender, or in case of pursuit, in any place to which he has escaped, and deliver him over to a peace officer," (s. 2).

I maintain that the only power of arrest open to a police officer in the circumstances is under the Prevention of Offences Act, 1851, s. 11, for the commission of an indictable offence (only) at night, and that the only way in which he could exercise a power of arrest *under the Act* (*i.e.*, Night Poaching Act, 1828), would be by being classified as " an assistant " of the owner or occupier.

However, in *Kenny's Outlines of Criminal Law*, 15th edn., p. 529, there appear the following paragraphs:—

(*A*) (*iii*) " In addition to these two common law powers, modern statutes permit any *private person* to arrest anyone whom he finds signalling to a smuggling vessel, or committing any offence under the Vagrancy Act, the Larceny Act, 1916, or the Coinage Offences Act, 1861, or committing by night any indictable offence whatever:

(*iv*) or, *if the arrest be authorized by the owner of the property concerned*, anyone whom he finds committing any offence against the Malicious Damage Act, 1861, *the Night Poaching Act, 1828*, the Town Police Clauses Act or the Metropolitan Police Act.

(*B*) *A police constable, even when acting without a warrant*, has powers still more extensive than these of a private person, etc. . . . Like a private person, he may arrest in the five cases in A (iii), and, *even without the consent of the owner of the property, in the four cases enumerated under* (*A*) (*iv*)."

This is supported by *Marston Garcia's Criminal Law in a Nutshell* (7th edn.), which on p. 103 states that *if the owner permits*, any *private person* may arrest any person offending against, *inter alia*, the *Night Poaching Act, 1828*, for which offences a police constable may also arrest, but *without the owner's permission.*

I think I am right in saying that, as far as a misdemeanour is concerned, a constable (or any person for that matter) has no power of arrest *unless* one is provided for *by statute* or unless *found committing and also accompanied by a breach of the peace.*

I should be obliged therefore, if you could enlighten me on this subject as I am at a loss as to where this power of arrest for offences against the Night Poaching Act, 1828 derives. V. PERPLEX.

Answer.

Some offences against the Night Poaching Act, 1828, are punishable on indictment, and any person found committing such an offence in the night could be arrested by any person whatsoever (including a police officer) by virtue of s. 11 of the Prevention of Offences Act, 1851. The matter of the permission of the owner, etc., would not arise.

As to offences against the first mentioned Act which are punishable summarily only, there appears to be no power of arrest except by the persons referred to in s. 2 of the first mentioned Act, and in our opinion a police officer could arrest only if he were such a person. We do not think he is a "servant," but he might be a person assisting a gamekeeper or servant.

We are unable to trace any authority for the statement that a police officer may arrest for an offence against this Act, which is punishable summarily only, without the authorization of the owner of the property. In 15 *Halsbury*, 2nd edn., at p. 439 it is stated that " the police have no part assigned to them under these statutes (*i.e.*, the Game Act, 1831, and the Night Poaching Acts, 1828 and 1844) and any part they may take is only such as any bystander called upon to render assistance might assume."

7.—Road Traffic Acts—*Evidence—Statement by driver that he was employed by a company as evidence against the company.*

A is charged and convicted before a magistrates' court with using a motor lorry which transmitted to the road surface a weight in excess of the maximum contrary to reg. 68 of the Motor Vehicles (Construction and Use) Regulations, 1955. B and Co., Ltd. are charged with a similar offence at the same time and place. The only evidence before the court against the company is that A stated to the constable that he was employed by B and Co., Ltd. and a certificate under s. 41 (2) of the Criminal Justice Act, 1948, is produced stating that the secretary stated the company was the owner of the motor lorry on the date of the offence.

Is the statement of A admitting that he was a servant of the company evidence against the company as being an admission made on behalf of the company by its servant or must the employment by the company of A as its servant be proved by direct evidence? KAPEL.

Answer.

A's statement is not admissible as evidence against the company and, so far as they are concerned, there must be evidence not only that the vehicle belonged to them but also that it was, at the material time, being used on their business.

8.—Road Traffic Acts—*Pedestrian Crossings—Failure of illumination in one globe where only two are provided on the crossing.*

There has been considerable divergence of opinion among my colleagues over the precise meaning of the proviso at 7 (*c*) of part II of sch. I to the Pedestrian Crossings Regulations, 1954.

Under para. 6, sub-para. (3) of part II to the schedule, it states that globes placed at or near the end of crossings shall be illuminated by a flashing light. At para. 7 it states that a crossing shall not cease to be such by reasons of, *inter alia*, (*c*) the failure of the illumination of any of the globes. From this it would appear that, should one of the globes not be illuminated, either by day or by night, the Pedestrian Crossings Regulations of 1954 would still apply, but there is a proviso to 7 (*c*) which states " Provided that this sub-para. shall not apply unless at least two globes mounted at separate positions are illuminated in accordance with the provisions of sub-para. (3) of the last preceding paragraph."

It is this proviso which is causing confusion. An offence has been reported, but it has been found that one of the globes was not illuminated at the time of the offence. One school of thought maintains that the proviso to para. 7 makes it imperative that the two globes must be illuminated in accordance with para. 6, subs. (3). The other school of thought is of the opinion that, because of this proviso, para. 7 (*c*) will apply and that an offence is committed, even although one of the globes is not illuminated.

I have referred to the article, " Pedestrian Crossings " at 118 J.P.N. 290, and note that your contributor does state that para. 7 is an "escape" clause, which provides that an uncontrolled crossing shall not cease to be such by reason only of, *inter alia*, (*c*) the failure of illumination of any of the globes, which leaves at least two in separate positions, properly illuminated.

I can find no law on this subject, and I should be very grateful if you could give me your valued opinion on this point. MOMOR.

Answer.

By para. 6 (3) certain crossings may be provided with more than two illuminated globes, and on such crossings, provided that two of them in different positions remain illuminated, the crossing does not cease to be properly indicated merely because the light in any of the other globes fails.

If, however, there are only two globes and the light in one fails, leaving only one illuminated, the crossing is not properly indicated.

9.—Slaughter-houses—*Appeal against refusal to renew licence—Order in which parties to be heard.*

My council have recently refused an application for the renewal of a slaughter-house licence pursuant to s. 57 of the Food and Drugs Act, 1938, now, of course, repealed and re-enacted by the Food and Drugs Act, 1955. An appeal has been lodged with the magistrates against the council's refusal. By s. 87 of the former Act, s. 117 of the 1955 Act and r. 30 of the Magistrates' Courts Rules, 1952, it is clear that the appeal should take the form of a complaint for an order, and I would have inferred from this that the appellant being, for the purposes of the appeal, the complainant, would have been required to open the proceedings by presenting his case first. It has, however, been suggested to me by the appellant's solicitors that the converse should apply and more usually does, the local authority being required virtually to justify its refusal before the appellant is called upon to make his case. I can find no authority for this if, in fact, it is a usual practice and would appreciate any information you can give me on this point. TAINE.

Answer.

We are inclined to agree with the view that the appellant, as complainant, should put his case first. Section 45 of the Magistrates' Courts Act, does not say explicitly, as did s. 14 of the Summary Jurisdiction Act, 1848, that the complainant is to be heard first, but in all hearings of ordinary complaints that is the procedure followed, and we see no reason for departing from it. At the same time, we do not think the proceedings would be invalidated if the order were reversed.

10.—Water Act, 1945—*Failure to supply—Withholding of rate.*

My council operates a water undertaking under the provisions of the Public Health Act, 1936. Payment of part of the domestic water rate due is being withheld by a householder because the water supply to his premises fails between 8.30 *a.m.* and 10 *a.m.* daily. He is not the only person affected in this way at certain periods. A duplicate main is in course of construction. It is contended that he has a reasonably available supply of water. Is the balance of the water rate recoverable and has the householder any legal redress against the council ?

PEMIN.

Answer.

The council will be liable under s. 30 of sch. 3 to the Water Act, 1945, incorporated by s. 120 of the Public Health Act, 1936, unless they can bring themselves within the proviso to s. 30 (2) of sch. 3 of the Act of 1945. The water rate, however, must have been tendered or paid and the civil remedy would be by action for failure to perform a statutory duty causing damage. The fine is without prejudice to the civil liability of the council, if any, but *see Atkinson* v. *Newcastle Waterworks Co.* (1877) 36 L.T. 761.